

DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
OLLY NEAL, Judge

CACR05-1097

June 21, 2006

JEROME LEWIS
APPELLANT
v.

AN APPEAL FROM THE
PHILLIPS COUNTY CIRCUIT
COURT [CR-04-31]

STATE OF ARKANSAS
APPELLEE

HONORABLE L. T. SIMES, II,
JUDGE

AFFIRMED

On January 16, 2004, the State filed a felony information in the Phillips County Circuit Court charging appellant Jerome Lewis with three counts of rape. The State alleged that, between January 2003 and December 2003, appellant unlawfully engaged in sexual intercourse or deviate sexual activities with his three daughters, C.B. (born 6/26/88), T.B. (born 1/25/91), and M.B. (born 10/9/91). Following motions for directed verdict challenging the sufficiency of the evidence as it related to C.B. and T.B., the State amended the charge as to C.B. to sexual assault in the first degree and the charge as to T.B. to sexual assault in the second degree. The rape charge as to M.B. remained.

Appellant was convicted of rape and sexual assault in the first degree. He was sentenced to serve a term of fifty years for the rape and a term of ten years for the sexual assault. The sentences were to be served concurrently. Appellant was also fined \$15,000 for the sexual assault. On appeal, appellant only challenges the sufficiency of the evidence to support his rape conviction. We affirm.

The evidence at appellant's trial established the following. Jill Jones, a nurse

practitioner, testified that, on November 26, 2003, she was working at the Marvell Medical Clinic when M.B.'s mother brought her in for a pregnancy test. Ms. Jones said that, at the time, M.B. was twelve years old and did not appear to be mature for her age. Ms. Jones testified that M.B.'s pregnancy test was positive. She said that, when asked who was the father of her baby, M.B. replied that she had a twelve-year-old boyfriend. Ms. Jones testified that she reported M.B.'s pregnancy to the Child Abuse Hotline.

Charles Walker, Chief of the Marvell Police Department, testified that, after being informed by Ms. Jones of M.B.'s pregnancy, he and others questioned M.B. He said that, when asked "if she knew how she got pregnant," M.B. stated that she had a twelve-year-old boyfriend. When asked what she and her boyfriend did, M.B. explained that all they did was write letters to each other and talk on the phone. Chief Walker testified that, after being informed by his dispatcher that in order to get pregnant a person had to have sex, M.B. replied "[a]in't nobody had contact with me like that but my daddy." Chief Walker testified that he later obtained a statement from appellant in which appellant admitted that, in 2003, he had sex with his daughters C.B. and M.B. and that he had not "touched [T.B.] this year."

M.B. testified that she knew the difference between the truth and a lie. She said that she also knew what it meant to say someone had sex with her. M.B. testified that appellant was the father of her child. She said that appellant began having sex with her after her mother left and that, at the time, she was eleven and a half years old. M.B. stated that appellant had sex with her on more than two occasions. She explained that:

He would call me into my mother's room and feel on me and tell me to pull down my pants. Then he would have sex with me. He would pull off his clothes and touch me on my privates. He would use other parts of his body besides his hands. He would put other parts of his body into mine.

She also testified that she had observed appellant having sex with her sister, C.B. M.B. denied writing a statement to Chief Walker in which she recanted her rape accusations.

T.B. testified that she was fourteen years old and that she also knew the difference between the truth and a lie. She recalled telling Chief Walker that appellant had touched her in an inappropriate manner. She testified that appellant gave her money so that she would not tell anyone. T.B. said that she did not know if appellant had ever touched her sisters. During her testimony, T.B. stated that her mother made her write a statement recanting her allegations.

C.B. testified that she was sixteen years old. She said that appellant had sex with her against her will and that this had occurred in M.B.'s presence. C.B. testified that she had also observed appellant having sex with M.B. She said that her mother wrote a statement saying that appellant had not had sex with her and made her sign it.

At the close of the State's case appellant moved for directed verdict. After the State amended the charges as they related to T.B. and C.B., appellant agreed that the amendments disposed of his directed verdict motions as to T.B. and C.B. As to the charges related to his conduct with M.B., appellant argued that the evidence against him was insufficient because there was no medical proof definitively establishing that he was the father of M.B.'s child. The trial court denied appellant's motion. Thereafter, appellant rested without putting on any evidence and renewed his motion for directed verdict. The trial court again denied the motion. From that decision, appellant now brings this appeal.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Parker v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Dec. 14, 2005). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct, or circumstantial. *Williams v. State*, ___ Ark. ___, ___ S.W.3d ___ (Oct. 6, 2005). Substantial evidence is evidence that is of sufficient certainty and precision to compel a conclusion one way or the other and pass beyond mere suspicion or conjecture. *Id.* When a defendant

challenges the sufficiency of the evidence convicting him, the evidence is viewed in the light most favorable to the State. *Parker, supra*. This court will only consider evidence that supports the verdict. *Id.*

A person commits the crime of rape if he engages in sexual intercourse or deviate sexual activity with a person who is less than fourteen years of age. Ark. Code Ann. § 5-14-103 (a)(3)(A) (Repl. 2006). Sexual intercourse is defined as the penetration, however slight, of the labia majora by a penis. Ark. Code Ann. § 5-14-101 (10) (Repl. 2006). Deviate sexual activity is defined as any act of sexual gratification involving the penetration, however slight, of the labia majora or anus of a person by any body member or foreign instrument manipulated by another person. Ark. Code Ann. § 5-14-101(1)(B) (Repl. 2006). It is well settled that the uncorroborated testimony of a rape victim is sufficient to support a conviction if the testimony satisfies the statutory elements of rape. *Williams, supra*; *Marshall v. State*, __ Ark. App. __, __ S.W.3d __ (Jan. 18, 2006); *Cox v. State*, __ Ark. App. __, __ S.W.3d __ (Dec. 14, 2005).

Appellant argues that the evidence against him was insufficient in that the State failed to present any medical evidence establishing that he was the father of M.B.'s child. Appellant's argument is misplaced. In order to convict appellant of the charge of rape, the State need only prove (1) that he engaged in sexual intercourse or deviate sexual activity with another person and (2) that the other person was less than fourteen years of age. During appellant's trial, M.B. testified that appellant began having sex with her when she was eleven-and-a-half-years old. Plus, the acts described by M.B. during her testimony satisfy the definition of sexual intercourse. Using only M.B.'s testimony, the State can establish the elements of rape. Accordingly, we hold that there was sufficient evidence establishing the crime of rape.

Affirmed.

GLOVER and ROAF, JJ., agree.